

TUESDAY, MARCH 26, 2002

The Board met at its offices at 450 N Street, Sacramento, at 11:00 a.m., with Mr. Chiang, Chair, Mr. Klehs, Vice Chair, Mr. Andal and Mr. Parrish present, Ms. Mandel present on behalf of Dr. Connell in accordance with Government Code section 7.9.

ANNOUNCEMENT OF CLOSED SESSION

The Board recessed at 11:05 a.m. and reconvened immediately in closed session with Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel present.

CLOSED SESSION

The Board met to discuss pending litigation, Revenue and Taxation Code sections 7093.5, 7093.5(b)(3), 30459.1 and 50156.11, settlements and personnel matters.

The Board recessed at 11:10 a.m. and reconvened immediately in open session with Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel present.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Jon and Rita Minnis, 100638

1995, \$1.00 or more Claim for Refund

1996, \$1.00 or more Claim for Refund

Milpitas Materials Company, 104667

12-31-95 \$1.00 or more Claim for Refund

For Appellant:

Derick Brannan, Representative

Kathleen Dill, Representative

Robert Reynolds, Representative

Jon Minnis

For Franchise Tax Board:

Geoffrey Way, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issues: Whether the truck chassis/engine components of appellant's ready-mixed concrete trucks meet the requirements for qualified property for purposes of the Manufacturers' Investment Credit.

Whether the amounts allowed to appellant by a truck dealer for trade-ins at the time appellant purchased new trucks at issue herein are properly chargeable to appellant's capital account, and thus constitute qualified costs for purposes of the Manufacturers' Investment Credit.

Appellant's Exhibit: Letter withdrawing Issue 2; light bulb manufacturing process diagram (Exhibit 3.12)

Action: Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board adopted a decision reversing the action of the Franchise Tax Board on Issue 1.

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Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board directed the Appeals Section to prepare a draft Formal Opinion for Board consideration.

Exhibits to these minutes are incorporated by reference.

BUSINESS TAXES APPEALS HEARINGS

National Superior Vending, Inc., 30065

1-1-95 to 9-30-98, \$216,496.82 Tax

\$00.00 Penalty, Negligence

For Petitioner: No Appearance

For Sales & Use Tax Department: David H. Levine, Counsel

Action: The Board took no action.

Proflowers, Inc., 155104

2-06-98 to 9-30-01, \$4,550,501.40 or \$67,037.40 Tax

For Petitioner: Bill Stauss, Chief Executive Officer

Roy E. Crawford, Attorney

For Sales and Use Tax Department: Jeffrey Graybill, Counsel

Contribution Disclosures pursuant to Government Code section 15626: No disqualifying contributions were disclosed.

Issues: Whether the Department erred in disallowing all of petitioner's deductions from the gross receipts derived from retail sales of flowers and accessories delivered to persons located outside California.

Whether petitioner is allowed any reduction on the basis that the audit includes gross receipts solely of Flowerfarm.con during the time before a merger of such entity into petitioner.

Whether petitioner is entitled to reductions from the use tax deficiency on the grounds that the only use of "promotional goods" allegedly withdrawn from petitioner's California resale inventory occurred outside California; or in the alternative, if use tax applies, whether the estimated audit percentage of 60 percent California withdrawal and use is excessive.

Whether petitioner is entitled to any adjustment relating to "promotional expenses" for shipping charges, the cost of items allegedly purchased for resale, or for discounts.

Whether petitioner is entitled to a \$185,000 measure reduction on the basis that software was returned to seller Mercury Interactive in exchange for a full refund of the purchase price.

Whether \$165,906 in gross receipts, alleged by petitioner to be for the second quarter of 2001 as part of the audit resales category, is separately nontaxable on the basis of being derived from "out-of-state" sales.

Whether reductions can be allowed for an estimated allocation in taxable gross receipts for chocolates sold as part of packages but not invoiced at any separate price.

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Action: Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered Issues 2 and 5 be granted, and decreased the measure of tax after a reaudit with regard to Issues 3 and 4.

Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition be granted as to the remaining issues.

The Board recessed at 11:40 a.m. and reconvened at 1:30 p.m. with Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel present.

BUSINESS TAXES APPEALS HEARINGS

Mathew Valencia, 112999

1-1-98 to 6-30-00, \$6,156.07 Tax

\$615.63 Penalty, Negligence

For Petitioner:

Mathew Valencia

James West, Accountant

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issues: Whether the understatement of taxable sales was established in accordance with the facts.

Whether relief from the interest charges is warranted.

Whether relief from the negligence penalty is warranted.

Action: Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

MS Carpet, Inc., 19285

1-1-95 to 12-31-97, \$20,584.64 Tax

For Petitioner:

Abe Golomb, Representative

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issue: Whether sufficient documentation has been presented to prove that purchases of materials are overstated.

Action: Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

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K.B. Products, Inc., 34346

7-1-95 to 6-30-98, \$6,022.57 Tax

For Petitioner:

Mike Puri, President

Juanita McVay, Vice President

Criselda S. Bateh, Accountant

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issue: Whether the disallowed claimed sales for resale are valid.

Action: Upon motion of Mr. Andal seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board granted the Appeals Section 30 days to review additional documentation and bring the matter back before the Board with a final recommendation.

Mission Bay Car Exchange, 89002194380, 28594

7-1-93 to 12-31-95, \$169,829.91 Tax

\$17,340.08 Penalty, Negligence

For Petitioner: Appearance Waived

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issues: Whether the evidence shows that the disallowed sales for resale are valid.

Whether the evidence shows that the audited understatement of taxable sales is excessive.

Whether the evidence shows that the allowances for bad debts and returned merchandise should be increased.

Whether relief is warranted from the 10 percent penalty added for negligence.

Action: Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Section.

FINAL ACTION ON PETITIONS HEARD MARCH 26, 2002

Upon motion of Mr. Klehs, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition of *Mathew Valencia, 112999*, be redetermined as recommended by the Appeals Section.

Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition of *MS Carpet, Inc., 19285*, be redetermined as recommended by the Appeals Section.

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The Board adjourned at 2:10 p.m.

The foregoing minutes are adopted by the Board on May 30, 2002.

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